

Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (a) + (c)

Submission No. 29

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4 April 2000

Ms Sue Morton
Secretary
Senate Select Committee on Superannuation and Financial Services
Parliament House
Canberra ACT 2600

Dear Ms Morton,

Thank you for your invitation to the ACTU to make a submission to the Committee's current inquiry. The ACTU submission is attached.

Please contact Linda Rubinstein if you require any further information.

Yours sincerely,

Greg Combet
SECRETARY

ACTU SUBMISSION TO SELECT COMMITTEE ON SUPERANNUATION AND FINANCIAL SERVICES

April 2000

INTRODUCTION

1. The ACTU welcomes the opportunity to make a submission to the Committee.
2. The ACTU submission will focus on issues relevant to protection of the interests of superannuation fund members, including supervision, regulation and compliance.
3. Although these issues have taken on particular prominence in the context of the debate about the Government's proposal to introduce choice of superannuation funds, they are also relevant to the current operation of the superannuation system.

PRUDENTIAL SUPERVISION AND CONSUMER PROTECTION

Disclosure

4. Superannuation funds should be required to disclose all relevant information in a form which is accessible to all Australians. This means that it must be in clear, simple language, with consideration given to requiring funds to provide information in the major community languages.
5. Regulations should require that funds be required to disclose all fees and charges as flat \$ amounts in a standard format.
6. Given the importance of fees and charges (including commissions) to the member's payout on retirement, disclosure statements should be required to show final payouts in a standard format and on the basis of standard assumptions regarding tax, crediting rates, inflation and contributions.
7. Each type of fee or charge, including entry fees, exit fees, commissions, administration costs and investment charges, should be required to be shown separately in a standard format.
8. Tables showing past performance should be in a standard format and should be after all fees and charges.

Commissions

9. Payments to agents selling on commission can have a seriously adverse effect on the cost of membership of funds which engage in this practice, as well as on members' final payout.
10. The ACTU submits that payment of commissions should be prohibited in relation to SGC contributions, and be fully disclosed in funds' key features statements in all other cases.

Identification of funds at risk

11. There has been some concern in the superannuation industry at the recent ASIC report to the effect that 20 per cent of funds' member statements failed to include one or more specific disclosure items, even though in many cases this was because the funds had tried to use more accessible language to describe such concepts as "unrestricted non-preserved amounts". (see *Superfunds* Edition No. 234, March 2000)
12. It is important that ASIC and APRA do not take an overly technical approach to funds which are meeting all the statutory requirements, particularly when there are cases, such as the collapse of the Queensland EPAS scheme, where it would appear that there was not an adequate level of regulatory supervision.

Awards

13. The maintenance of superannuation provisions in federal awards is a crucial element in ensuring that employees are adequately protected. Funds are specified in awards with the approval of the independent Industrial Relations Commission, with an opportunity for a party with concerns about whether or not the fund is appropriate for the employees covered under the particular award to bring these to the attention of the Commission.
14. Most awards provide for a choice between more than one fund and/or for a mechanism for use of a fund other than those specified in particular circumstances. There is also scope for employees and employers to reach agreement for a different fund; collective agreements can be certified under the Act while individual agreements can be approved by the Employment Advocate as an Australian Workplace Agreement. In both cases the agreements are independently scrutinised to ensure that employees are not disadvantaged.
15. Further, the Commission has recently determined to insert a facilitative provision into a number of awards providing that an alternative fund to those specified can be utilised by agreement between the employer and an employee, or employees collectively.

16. The importance of maintaining the current structure for these arrangements is that they involve independent determination of whether or not the use of a particular fund is in the interests of employees, and that, in the event of a dispute, the issue can quickly and cheaply be brought before the Commission for conciliation and, if necessary, arbitration.

Education

17. Effective consumer protection requires adequate consumer understanding of superannuation. The evidence in Australia is that this level of understanding is far from having been achieved.
18. The dangers of exposing under-educated consumers to a competitive market place can be seen in the UK experience, where thousands of reasonably educated employees took decisions on pension products which were clearly not in their interests, and which later exposed the Government to significant financial liability.
19. An effective education campaign on superannuation will require a considerable financial commitment from Government, to which the industry should be required to contribute. An education campaign must be sharply differentiated from marketing, and must be developed and provided through a body which is completely independent from the industry, although it should, of course, receive advice from all sectors with an interest in the issue.
20. If the suggestion that the ATO has budgeted \$2 million for a campaign is correct, this is grossly inadequate, even to inform the public of current issues, such as the desirability of consolidating multiple accounts, and contacting the ATO to find out if they have contributions or vouchers to which they are entitled.
21. The ACTU submits that introduction of choice of fund will require massive resources for education, which would need to be far more interactive than the usual press and television advertising.

ENFORCEMENT OF THE SGC

22. The ACTU is concerned that the ATO reports that up to ten per cent of employers are not meeting their SGC obligations.
23. The ACTU believes that default is considerably less likely where the relevant fund or the award requires monthly payment of contributions. The ability to pay monthly means that employers accrue significant liability which they may not be in a position to pay by the due date. In the event that the employing company becomes insolvent, the likelihood is that employees would lose their superannuation entitlements for the whole year, whereas with a requirement for monthly contributions, there would be some early warning of any difficulty

in obtaining payments.

24. The ACTU submits that the Government should legislate to require monthly payment of SGC contributions by employers, and that award provisions requiring such payment should be retained.
25. Linked to requirements for monthly payment is the need for follow-up of employers who do not meet their obligations in a timely manner. Most large industry funds have an arrears process which commences two to three weeks after the due date of the monthly contribution, and which has been shown to be effective in ensuring compliance.
26. Enforcement would seem to be less of a problem with corporate and public sector funds, as the employers involved would have a commitment to the funds and to their employees, although there could be problems with some corporations meeting their obligations. Retail funds or very small funds are the most likely not to provide adequate follow-up of employers who fail to make contributions.
27. As well as affecting members' retirement incomes, late or non-payment of superannuation contributions may leave employees without death and TPD insurance, with potentially catastrophic effects for them and their families.
28. The ACTU notes that an effective arrears process is a feature of most of the funds specified in awards, and submits that this ought to be a requirement for all complying funds.
29. It should also be noted that the inclusion of superannuation entitlements in awards means that an employee, or his or her union, can pursue entitlements through a Magistrates Court or the Federal Court. Unions are regularly involved in recovery of member entitlements, including superannuation contributions, where employers have not met their obligations.
30. If not for awards, employees whose superannuation contributions are not paid must rely on the ATO to pursue the employer, a process which is likely to take a long time, if it happens at all.

CONCLUSION

31. The ACTU submits that maintenance of award superannuation provisions and involvement in the issue by the Industrial Relations Commission is imperative to ensure protection of members' interests and employer compliance, although this should be supplemented with increased regulation over areas such as disclosure, fees and charges and consumer education.